

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Tariff Filing of AT&T)	
Communications of the Southwest to)	<u>Case No. XT-2004-0288</u>
Extend the Enrollment Date of One Rate)	Tariff No. JX-2004-0760
5 Cents Plan)	

DISSENTING OPINION OF COMMISSIONER ROBERT CLAYTON

I dissent from the Commission's Order Approving Tariff and urge the Commission to reconsider its position on proposed tariff sheets that are patently misleading.

The tariff sheets filed by AT & T Communications of the Southwest (AT & T) is titled the "One Rate 5 Cents Plan", which is actually a six month extension for the subscription to this long distance calling plan in which the subscriber is eligible to have a \$.05 per minute interstate rate and a \$.14 per minute intrastate rate. There is a monthly recurring charge for this service. The Staff of the Commission recommended approval of the filing in that it met all of the requirements of applicable statutes, specifically sections 392.200.4, 392.200.8, 392.455(3) and (4), 392.500(2) and 392.515(1), RSMo. 2000. Staff also indicated that the company was current on its annual assessments and the filing of its annual reports.

Despite the review summarized above on the part of the Staff, the review failed to include a simple reading of the title of the calling plan and its provisions. The plan is entitled "AT & T One Rate 5 Cents". The title, which will be used in

advertising and marketing for the sale of the plan to Missouri customers, leaves one with the impression that there is a plan available for a single long distance rate for making phone calls at the amount of \$.05 per minute. The title is patently misleading in that the plan neither has one rate as advertised nor is that rate \$.05 per minute.

The plan contains two rates, one rate for interstate calling and one rate for intrastate long distance calling. While most long distance or toll calling plans have two rates for in-state and out-of-state calling, those plans do not advertise or market within the title of the plan that there is only one rate.

AT & T filed a new tariff sheet with additional language which reads, "The intrastate prices will be provided to the customer at the time of purchase." This addition implies that the company did not inform the customer of the various rates prior to contract. In my opinion, the only way to remedy this misleading plan is to modify the title of the plan in a way that removes the reference to "one rate" or the five cents, or to actually provide the service as it reads and offer a single rate of five cents for all long distance calls.

The long distance business is very competitive and the marketing of plans has evolved since the deregulation of the telecommunications industry. The United States Congress and the Missouri General Assembly have decreed a preference for competition and less regulation by traditional government agencies while expecting the "invisible hand" to moderate the actions of former monopolies. Both legislative bodies have embraced the emergence of creative and innovative long distance and local calling plans that afford consumers more

choice. Both entities have removed the various state public utility commissions from many regulatory responsibilities.

However, the Missouri Public Service Commission continues to have the responsibility to accept and review all tariffs involving calling plans within our state. Considering that we have that responsibility, I believe that we have the charge of verifying compliance with state law as well as making a basic evaluation of the plan in what it purports to make available to customers and whether the plan actually provides that service. This plan states that it is one rate and only 5 cents. There are actually two rates and only one of the rates is 5 cents.

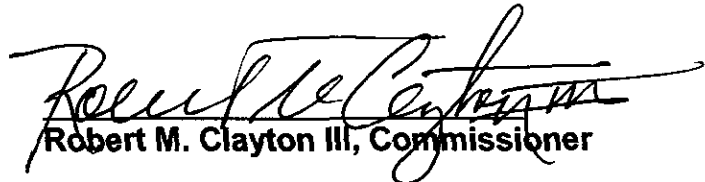
I would note that I have urged my colleagues to reject similar tariff filings which have the same type of misleading language, most notable the tariff in Case No. XT-2004-0143. In that case, SBC Long Distance of Missouri filed tariff sheets offering a long distance plan titled, "Just Call 3 Cents", in which it actually charged \$.07 per minute for intrastate calls. That tariff filing did not make any reference to the interstate rate and has been withdrawn and resubmitted to reflect \$.03 per minute all of the time for interstate and intrastate calls with a monthly recurring charge.

I believe that the public deserves this basic review of plans that are advertised and marketed in this state. I believe that the selection of a telecommunications provider is a difficult and complex decision for many consumers because to understand the varying levels of services and pricing requires the study of lengthy contracts and tariffs. The vast majority of citizens

have neither the time, nor inclination or nor the ability to review this material and that majority expects the Public Service Commission to perform this basic review.

For the above stated reasons, I, therefore, dissent from the Commission in its approval of this tariff filing and urge my colleagues to reject tariffs of this nature in the future.

Respectfully submitted,



Robert M. Clayton III, Commissioner

Dated at Jefferson City, Missouri,
on this 16th day of January 2004.